

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
NEWPORT NEWS DIVISION**

In re:

DONNIE JAMES GOODEN, JR.,

CHAPTER 13

Debtor.

CASE NO. 08-50903-SCS

**AMERICA'S SERVICING COMPANY
AS SERVICER FOR WELLS FARGO
BANK, N.A.,**

Plaintiff/Movant.

vs.

**DONNIE JAMES GOODEN, JR.
R. CLINTON STACKHOUSE, JR., ESQUIRE, TRUSTEE,**

Defendants.

**ORDER GRANTING
MODIFICATION OF STAY**

The Motion of the Plaintiff, America's Servicing Company as servicer for Wells Fargo Bank, N.A., to amend the automatic stay having been properly served on the Trustee, Counsel for Debtor, and the Debtor and, upon agreement by Counsel,

It appears that Debtor is in possession of a certain real property hereinafter described upon which Plaintiff holds and/ or services a Note secured by a valid Deed of Trust; that the Debtor has agreed to cure the post-petition delinquency and maintain the account in a current status whereby the Plaintiff will be entitled to automatic relief, subsequent to ten (10) days Notice of Default to Debtor and Counsel for Debtor. Should Debtor fail to timely reinstate in accordance with any such Notice of Default, Relief from Stay will be automatic incident to the property located at **305 Warwick Landing Pkwy., Newport News, VA 23608**, and described as follows:

All that certain lot, piece or parcel of land situate, lying and being in the City of Newport News, Virginia, known and designated as Lot 3A, as shown on that certain plat entitled, "RESUBDIVISION OF LOTS 1 THRU 4 & PART OF PARCEL "A", WARWICK LANDING, CITY OF NEWPORT NEWS, VIRGINIA", made by Coenen & Associates, Inc., Engineers-Planners-Surveyors, dated December 11, 1995 and duly recorded in the Clerk's Office of the Circuit Court of Newport News, Virginia, in Deed Book 1423, page 358, to which reference is here made.

Upon consideration whereof, it is **ORDERED** that relief from the automatic stay be, and it hereby is, presently denied, provided however, that the Debtor comply with the following conditions:

- (a) Debtor will resume making all future regular monthly installment payments as they become due commencing March 1, 2009, each payment to be timely made, including any applicable late charges.
- (b) Debtor will cure any arrearage currently due to the Plaintiff for the months of November, 2008 through February, 2009, in the total amount of \$5,723.72, which includes late charges and attorney's fees and costs.

1) The arrearage amount set forth herein is contingent upon the sufficient clearing of any previously applied post-petition funds.

2) The breakdown of the post-petition arrearages is as follows:

4 monthly payments (11/08-02/09) @ \$1,317.55/month	\$ 5,270.20
Accrued late charges (11/08-02/09) @ \$44.63/month	178.52
Suspense Balance	- (800.00)
Post-petition fees and costs	<u>1,075.00</u>
Total due post-petition through February, 2009	\$ 5,723.72

3) The arrearage payment schedule set forth below is contingent upon the bankruptcy case remaining an active, paying case. Notwithstanding the repayment schedule set forth below, in the event the case no longer remains active/open, all arrearage payments will be immediately due and payable.

4) Conditioned upon receipt, application and sufficient clearing of funds in the amount of 1,317.55 on or before 02/15/09

5) Payment of \$734.36 on or before March 15, 2009.

6) Payment of \$734.36 on or before April 15, 2009.

7) Payment of \$734.36 on or before May 15, 2009.

8) Payment of \$734.36 on or before June 15, 2009.

9) Payment of \$734.36 on or before July 15, 2009.

10) Payment of \$734.37 on or before August 15, 2009.

(c) All payments should be forwarded to the following address until further notice: **Wells Fargo Bank, NA, Bankruptcy Payment Processing, MACX 2302-04c, Des Moines, IA 50328.**

(d) In the event of a default in the terms of this Order, Debtor will be responsible for any additional fees incurred incident to the issuance of any notice of default.

(e) To the extent it may be necessary, the automatic stay is modified to permit the secured noteholder and/or servicer for the subject loan to mail the Debtor payment coupons, notice of payment changes, notice of late payments, monthly statements or

notice (other than a notice of acceleration), customarily sent to mortgagors in the ordinary course of business.

Should the Debtor fail to satisfy these conditions, the Plaintiff, its successors or assigns, will have relief from stay and may proceed forthwith to enforce its security agreement, subsequent to ten (10) days Notice of Default to Debtor and Counsel for Debtor. In the event Debtor fails to timely reinstate in accordance with any such Notice of Default, Relief will be automatic as to the Debtor, with no further hearing or order required. In the event relief is granted, foreclosure proceedings may be commenced incident to State Law.

Once the Debtor make all of the stipulated payments during the cure period as required in the order, then all Mortgage payments, costs, fees and late charges shall be deemed current from the date of the filing of the bankruptcy through the date of the entry of the order.

In the event of a default which results in the granting of Relief, the Chapter 13 Trustee will be relieved of any and all obligation to remit payment incident to the arrearages set forth in the Proof of Claim filed by the Plaintiff.

Time is of the essence; all future monthly payments must be timely received; a check returned by the bank for any reason is deemed a violation.

Should Plaintiff, at its option, accept a non-timely payment, it will not be deemed to have waived its rights pursuant to any other provisions contained within this Order.

In the event Dismissal or Conversion, the current contractual balance due shall be owing, and relief shall be automatic as to the Debtor, with no further Notice, Hearing or Order required.

It being **FURTHER ORDERED**, pursuant to the requirement of the Chapter 13 Trustee and of the Court, that the Movant shall promptly notify the Court and the Chapter 13 Trustee in writing of the results of any foreclosure of the subject deed and pay to the Chapter 13 Trustee any excess funds received from such foreclosure sale, to be disbursed upon agreement with the Debtor or upon further order of the Court.

It is further **ORDERED** that the ten (10) day stay is hereby waived and the terms of this Order are immediately enforceable.

It is additionally acknowledged that by endorsement of this Order, Counsel for Debtor(s) hereby represents that Debtor has been advised of the terms of the agreement as set forth in this Order.

DATED:

JUDGE

NOTICE OF JUDGMENT OR ORDER
Entered on Docket

I ask for this:

/s/ D. Carol Sasser

Samuel I. White, P. C.

D. Carol Sasser, Esquire, VSBN 28422

Counsel for America's Servicing Company as servicer for Wells Fargo Bank, N.A.

5040 Corporate Woods Drive

Suite 120

Virginia Beach, VA 23462

Seen and Agreed:

/s/ Richard G. Poinsett

Richard G. Poinsett, Esquire

Counsel for Debtor

2 Eaton Street, Suite 502

Hampton, VA 23669

Seen:

/s/ R. Clinton Stackhouse, Jr.

R. Clinton Stackhouse, Jr., Esquire

Chapter 13 Trustee

870 Greenbrier Circle

Suite 200

Chesapeake, VA 23320

CERTIFICATE

I certify that this proposed Order has been endorsed by all parties involved in this proceeding.

/s/ D. Carol Sasser

Samuel I. White, P. C.

The Clerk shall mail a copy of the entered Order to the following:

R. Clinton Stackhouse, Jr., Esquire
Chapter 13 Trustee
870 Greenbrier Circle
Suite 200
Chesapeake, VA 23320

Richard G. Poinsett, Esquire
Counsel for Debtor
2 Eaton Street, Suite 502
Hampton, VA 23669

Donnie James Gooden, Jr.
Debtor
305 Warwick Landing Parkway
Newport News, VA 23608

D. Carol Sasser, Esquire
Counsel for America's Servicing Company as servicer for Wells Fargo Bank, N.A.
5040 Corporate Woods Drive
Suite 120
Virginia Beach, VA 23462

and

Wells Fargo Bank, NA
Bankruptcy Payment Processing
MACX 2302-04c
Des Moines, IA 50328